IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 713 OF 1990

1. Shivaji Ramchandra Khade)
2. Ramchandra Nana Khade)
3. Sou.Housabai Ramchandra Khade)..... Appellants
(Ori. accused)

versus

The State of Maharashtra .... Respondent

Shri A.P.Mundargi Sr. Advocate for the appellants
Shri U.V.Nikam APP for the respondent.

CORAM; ABHAY S. OKA, J.

DATE ON WHICH
ARGUMENTS WERE HEARD: 31ST NOVEMBER 2006.

DATE ON WHICH
JUDGMENT IS PRONOUCED: 29TH JANUARY 2007.

JUDGMENT;

1. Heard Shri Mundargi the learned senior counsel appearing for the appellants and Shri Nikam the learned Additional Public Prosecutor. The appellants have been convicted for offences punishable under section 498-A read with section 34 of the Indian Penal Code as well as section 304-B read with section 34 of the Indian Penal Code (hereinafter referred to as the Penal Code). The appellants have been sentenced to suffer Rigorous Imprisonment for three years and to pay a fine of Rs. 1000/-. In default, the appellants

have been sentenced to undergo rigorous imprisonment for six months. This is the sentence for offence under section 498-A read with section 34 of the Penal Code. For the other offences, they have been sentenced to undergo rigorous imprisonment for seven years. Initially a charge was also framed against the appellants for offences punishable under section 306 read with section 34 of the Penal Code. The learned 4th Additional Sessions Judge, Kolhapur while convicting the appellants has held that in view of the conviction of the appellants under section 304-B read with section 34 of the Penal Code, charge under section 306 of the Penal Code does not survive and the same stands deleted.

2. With a view to appreciate the submissions made by the learned counsel appearing for the parties, it will be necessary to briefly refer to the case of the prosecution. The first informant Shri Parshuram B.Patil (P.w.1) is the maternal uncle of deceased Alka. The date of the incident is 9th June 1987. One year prior to the date of the incident, deceased Alka married to the appellant no.1 Shivaji. The appellant nos.2 and 3 are the father-in-law and mother-in-law respectively of deceased Alka. According to the prosecution case, stay of deceased Alka at her matrimonial home for an initial period of three months was very smooth. After first three months, the

appellants started demanding ornaments and money from the deceased. They started telling the deceased to bring money and ornaments from her parents. About three weeks prior to the date of incident, deceased Alka was suffering from fever. Therefore her mother Anandibai visited her matrimonial home. Her mother brought Alka to her home for the purposes of medical treatment. Alka was taken to the hospital at Kolhapur and was admitted there. After Alka recovered from the disease, the first informant and Alka's mother accompanied her to her matrimonial home. When they reached Alka's matrimonial home, the appellants were present in the house. The appellants informed deceased Alka, the first informant and Alka's mother that they could enter the house only if they had brought gold chain and gold ring as per their demand. It was alleged that the appellant no.1 slapped deceased Alka on her face and the appellants compelled her to go back. Thereafter Alka continued to stay at her parent's house. On 9th June 1987 the first informant was informed that Alka was missing from her parent's house and subsequently her dead body was found floating in the well of one Pundikar at village Kandalgaon. According to the case of the prosecution, appellants tortured and ill-treated the deceased Alka as their demand for money and ornaments was not complied with.

3. Shri Mundargi the learned senior counsel appearing for the appellants submitted that the evidence of material witnesses namely P.w.no.2, P.w.no.3 and P.w.no.6 is totally inconsistent about the alleged demand made by the appellants. He submitted that the said three witnesses have made material improvements in their case, while deposing before the court. He pointed out that there was no evidence regarding demand of dowry by the appellants and consequent harassment or ill-treatment to the deceased Alka. He submitted that in any event, there was no harassment or cruelty soon before her death as for a period of about eight days prior to her death, Alka was residing in her parent's house. He submitted that the prosecution witnesses were not very sure about even the exact nature of the alleged demands made by the appellants. He submitted that the prosecution has failed to establish the guilt of the appellants. The learned Additional Public Prosecutor submitted that the evidence of the prosecution witnesses was consistent as regards illegal demands made by the appellants and harassment and cruelty at the hands of the appellants to the deceased Alka on account of failure on her part to meet the demands. He submitted that the alleged improvement and contradictions pointed out by Shri Mundargi the learned counsel for the appellants in the evidence are insignificant and do not affect the core of the case of the prosecution.

4. It will be necessary to refer to the evidence of the prosecution witnesses. P.w.1 is one Mallu Lakhu Patil. He is a panch witness to the scene of offence panchanama. He stated that he was called by the police near a well of one Pundikar in village Kandalgaon. He stated that the well is located near a stream. He stated that the water in the well is generally dirty and cannot be used for drinking. He proved the panchanama of scene of offence in his evidence. In the cross examination he admitted that he did not state before the police that the water in the well was dirty and cannot be used for drinking. He stated that there were four steps in the well and the 4th step was wet. He stated that the length of each step is about 2 1/2 ft. and width is about 1 1/4 ft. He denied the suggestion that the second step in the well was broken. He admitted that the well in question was about 3 to 4 furlong away from the field of deceased Alka's father. He admitted that there were two wells on the way from the said field to Pundikar's well. He stated that there is a well in the field of Alka's father and there is another public well nearby the field. He stated that there are no step inside the public well. He then stated that there is another well which is at a distance of 30 ft. away from Pundikar's well and the said well has no steps.

5. P.w.2 is Parsharam Bapu Patil who is the maternal uncle of the deceased. He stated that he has four sisters. He stated that his sister Anandibai was married to one Babu Dhondi Patil. He stated that said Anandibai had two daughters by name Akkatai and Alka. He deposed that Alka married to appellant no.1 about one year prior to her death. He identified the appellants in court. He stated that one Balu Ravu Patil had taken leading part in settling the marriage of Alka and the appellant no.1. He stated that a list (agreement) was drawn in the house of Alka's father. It was agreed that Alka's father should give a sum of Rs. 8035/-, a mangalsutra and clothes in marriage. The P.w.2 identified his signature on the said list. He identified the signatures of other persons on the said list. It is pertinent to note that the said document was not produced along with the charge sheet and the same was produced at the time of recording of evidence of P.w.2. The witness stated that 15 days after the document was signed, the marriage of Alka was solemnised. He stated that for a period of three months after the marriage, the deceased Alka and appellants carried on very well. Thereafter the appellant no.1 Shivaji started demanding money and gold chain from Alka. He stated that he came to know about the said demand from his sister. He stated that his sister's condition was very poor and therefore she

could not satisfy the demand. Thereafter the appellant nos. 2 and 3 started abusing deceased Alka in connection with demand of money and ornaments. He stated that his sister visited Alka's matrimonial home when she learnt that Alka was not keeping good health. He stated that the appellants asked his sister to take Alka to her house as medical treatment was not available in the village. He stated that for a period of two days Alka was brought to her parent's house and after she recovered from the illness, he himself and his sister took Alka to her matrimonial home. He stated that they went to Alka's matrimonial home eight days prior to the date of death. He deposed that when they reached the matrimonial house of Alka, the appellant no.2 questioned them as to whether they had brought money, gold chain and gold ring. He stated that he would not allow Alka to enter the house unless the demand of money and gold ornaments was complied with. Alka told them that she would definitely enter the house and she tried to enter the house. At that time appellant no.1 caught Alka by her hair and slapped her twice. The witness stated that the appellant no. 1 dragged Alka out of the house. The witness also stated that he requested appellant no.1 to accept Alka. However the appellant no.1 told him to go away with Alka.

6. P.w.2 further stated that for a period of eight

days till her death Alka stayed with her parents. He stated that he met Alka 3 or 4 days after the incident and tried to pacify her. He stated that on 9th June 1987 he learnt about demise of Alka. He stated that he lodged complaint and he proved the complaint in his evidence.

7. P.w.2 admitted that the appellants also spent for marriage of Alka and the appellant no.1. He stated that his sister Anandibai is the second wife of Babu Patil. He stated that both his sister and the said Babu Patil were working as labourers. He also admitted that deceased Alka by nature was calm and quiet. He admitted that deceased Alka never used to get angry. He admitted that in the FIR it is not stated that he had learnt from his sister about demand of money and gold ornaments made by the appellants. He admitted that in the FIR it was not stated by him that the appellant no.1 demanded money and that the appellant nos. 2 and 3 used to abuse Alka for demand of money and told chain. He also admitted that there is no specific reference in the FIR filed by him to the allegation that when he along with Alka and his sister went to matrimonial home of Alka, the appellant no.1 asked him whether he had brought money and gold ornaments. He admitted that he was unable to tell the reason as to why it was not stated in the FIR that the appellant no.1 caught Alka's hair and slapped her

twice. He admitted that it is not stated in the FIR that the appellant no.1 dragged her out of the house. He admitted that he was unable to tell as to how Alka fell on the well.

8. P.w.3 Anandibai deposed about marriage of her daughter Alka with the appellant no.1. She stated that 2 to 3 months after the marriage, appellants started quarrelling with Alka and started demanding money and a wrist watch from Alka. She stated that after learning about the demand from her daughter,she borrowed a sum of Rs. 300/- from one Balu Patil and paid the said amount to Alka on account of wrist watch. She deposed that one month thereafter Alka informed her that appellant nos.1 and 2 had made a demand of Rs. 1000/- for their field. She stated that her husband obtained loan from the village society and paid the amount to Alka. She stated that thereafter appellant no.1 used to beat Alka and her in-laws used to abuse her for demand of gold ring and gold chain.

9. She stated that when she learnt from her son that Alka was not keeping good health, she visited Alka's matrimonial home and found Alka was bed ridden and no medical treatment was given to her. She brought Alka to her house and admitted her to a hospital at Kolhapur. The witness also deposed about her visit

along with P.w.2 and Alka to the house of the appellants. She stated that appellants prevented them from entering the house and all of them told her that they would allow entry only if gold chain and gold ring was brought as per their demand. She stated that she begged of appellant no.1 to accept Alka. She stated that as Alka insisted on entering the house, appellant no.1 slapped her twice on her face and dragged her out of the house. She stated that they waited outside the house of the appellant till late in the afternoon and reluctantly came back with Alka to her home. She stated that thereafter for a period of eight days Alka used to cry and used to state that she had no desire to live. She stated that on the day of the incident about 10.00 a.m. Alka and her daughter-in-law carried the tiffin for her husband to her husband's field. At about 5 p.m. Alka told her father that she was returning home as she was suffering from headache. She stated that Alka never returned home and after search, on the next day in the morning her dead body was found in the well of Pundikar.

10. In the cross examination P.w.3 admitted that in her police statement, she has not stated that a demand was made by appellant no.1 for a wrist watch and money. She admitted that she had not stated before the police that she paid a sum of Rs. 300/- and Rs.

1000/- to Alka for meeting the demands of the appellants. She admitted that by nature her daughter Alka was calm and quiet and she never felt that her daughter shall cause harm to herself. She admitted that when Alka was unwell she stayed in her matrimonial home for a night and during her stay there was no discussion in the house except about sickness of Alka. She admitted that she was unable to say as to why there is no reference in her police statement about the incident of appellant no.1 slapping deceased Alka in her face. She admitted that in her statement before police, it is not recorded that deceased Alka used to cry in her house.

11. P.w.4 is Pandurang K.Patil. He stated that he is the neighbour of Alka's parents. On instructions of Alka's father he went to the house of the appellants for enquiring whether Alka had come to their house as she was missing. Nothing turns on the deposition of said witness. P.w.5 Vasant Dattatraya Patil stated that on instructions of Alka's father he went to the house of the appellant and informed them that Alka had fallen in the well. He stated that the appellants told him that he should not tell anything to them about Alka.

12. P.w.6 Babu Dhondi Patil, the father of deceased Alka deposed about the demand of dowry including sum

of Rs. 8025/-, a mangalsutra and clothes made by the appellant no.2 at the time of settlement of the marriage. He denied his signature over the yadi (agreement) recorded at the time of settlement of marriage. He stated that three months after her marriage, the appellants started torturing Alka for demand of Rs. 300/- for a wrist watch, and Rs. 1000/- for mending of agricultural land. He stated that he borrowed sum of Rs. 300/- from Balu Patil and paid the said sum to Alka. He stated that he obtained a loan of Rs. 1000/- from the village society and paid the amount to Alka's in-laws. He also deposed about the fact that his wife brought Alka to his house as she was ill. He stated that as Alka expressed her desire to go back to her matrimonial home after she recovered from the illness, his wife, his wife's brother and Alka went to her matrimonial home and he described what transpired at the matrimonial home. However, this part is not relevant as the said witness has no personal knowledge about what transpired. He stated that for a period of eight days before her death, Alka looked concerned and used to say that she had no desire to live. He stated that on the day of incident he was working in his field. He also stated that Alka and his daughter-in-law came to the field at about 11.00 a.m. and they brought lunch tiffin. He stated that both of them were in the field upto 4 p.m. He also stated that at that time Alka told him that

she was suffering from headache and she went back to the house. He stated that at 6 p.m. he along with his daughter-in-law came back to his house, they found that Alka had not reached the house. Therefore they commenced search and on the next day morning they found Alka's body in the well of Pundikar.

13. In the cross examination he admitted that at the time of settlement of marriage a reference has been made in the yadi about the gifts to be given by the appellants to Alka. He agreed that both the parties agreed to give gifts according to the custom. He admitted that the appellants also spent for marriage. He stated that a statement was made in the yadi at Exh.16, that the amount of Rs. 8025/- was to be paid for marriage expenses is false. He stated that before his signature was obtained, the yadi was read over to him and he did not object to what was stated in the yadi. He stated that he has not produced any document to show that he had obtained loan of Rs. 1000/- from the society. He admitted that he did not state before the police that he paid money for wrist watch as well as for the field to Alka. He stated that Balu Patil from whom he borrowed Rs.300/- was present in the court premises. He admitted that he was unable to tell the month and year when he had taken loan from the society. He admitted that he did not state before the police that there was a demand of Rs. 300/- for

wrist watch and a demand of Rs. 1000/- for the field.

14. P.w.7 Dr. Sanjivani C.Sabnis stated that he carried on post mortem on the dead body of Alka. She stated that her opinion was that the death occurred due to cardio respiratory failure on account of drowning. She proved the post mortem notes in her evidence and he identified the signature thereon. P.w.8 Maruti Bhandgar was at the relevant time police inspector attached to Karveer police station. He recorded the FIR of P.w.2. He was the investigating officer. He was cross examined and he admitted that in the FIR there was no mention about the demand of gold ornaments and money. He admitted that there was no mention in the FIR regarding the allegations that Alka's in-laws used to abuse her for demand of ornaments. P.w.9 is Sharad Mane, the police inspector attached to Karveer police station who submitted the charge sheet in the court of the learned Magistrate.

15. The conviction of the appellants is under section 498 -A of the Penal Code. Explanation to the said section defines 'cruelty'. Cruelty means any unlawful conduct which is of such a nature as is likely to drive the woman to commit suicide. The explanation further defines cruelty as harassment to the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful

demand for any property or valuable security or is on account of failure by her or by her relatives to meet such demand. The appellants have been also convicted under section 304-B by holding that the death of Alka was a dowry death. The section provides that where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances, within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be known as dowry death and such husband or relative shall be deemed to have caused her death. Thus for establishing the offence under section 304-B the prosecution has to prove that there was any demand of dowry and that soon before her death the woman was subjected to cruelty or harassment for or in connection with the demand of dowry.

16. It will be necessary to refer to the yadi (agreement) at Exh.16. The agreement records that appellants were to give a mangalsutra, ear tops and clothes to the deceased. Said document records that the expenses of the marriage were to be born by the side of the husband. It records that the father of Alka was to provide a mangalsutra and clothes. It records that Alka’s father was to give a sum of Rs.

8025/- to the appellant no.2 on account of expenditure of marriage.

17. It is not the case of the prosecution that there was any harassment or cruelty on account of the said amount of Rs.8025/- in as much as even assuming that the said amount was on account of dowry, it was admittedly paid before marriage. The case made out by P.w.2 is that three months after the marriage, the appellant no.1 demanded money and gold chain from Alka. It is pertinent to note that the case made out by parents of Alka in their deposition is that three months after the marriage, there was a demand for money and wrist watch by the appellant no.1. P.w.2 has not at all deposed about any demand of wrist watch. P.w.2 has also not disposed about the alleged demand of Rs. 1000/- made for the field. P.w.2 has later on stated that as Alka's parents could not comply with the demand for money, and gold ornaments, he himself, Alka's mother and Alka were not allowed to enter the matrimonial house of Alka. So far as P.w.3 Anandibai is concerned, her version about the incident is that the appellants told Alka not to enter the house unless she had brought gold chain and gold ring. She had not deposed about any demand of money at that time by the appellants. P.w.3 Anandibai has come out with a case that her husband borrowed a sum of Rs. 1000/- from the society and paid to the in-laws of

Alka for mending of their field. She stated that her husband borrowed a sum of Rs. 300/- from one Balu and paid the same to Alka for wrist watch. P.w.2 has not at all deposed about the said two demands of Rs. 300/- and Rs. 1000/-. In the cross examination P.w.2 admitted that the appellants also spent for marriage of Alka and appellant no.1. He admitted that in the FIR it is not stated that he learnt from his sister about the demand of money and gold ornaments from Alka. He admitted that it is not stated in the FIR that Alka's in-laws used to abuse her on account of demand of money and gold chain. He admitted that the FIR does not refer to the allegation that the appellant no.1 caught hold of hair of the deceased and gave her two slaps and thereafter dragged her out of the house.

18. P.w.3 Anandibai admitted that when she stayed in the matrimonial home of Alka for a night, when Alka was not keeping good health, there was no discussion in the house except regarding sickness of Alka. She admitted that in her statement recorded by the police there is no reference to the payment of Rs. 300/- and Rs. 1000/- to Alka or to her in-laws. She also admitted that in her statement, there is no reference to the alleged incident of the appellant no.1 slapping at the face of Alka. She also admitted that Alka used to cry in her house when she stayed in

her house for a period of eight days before her death.

19. If the case of the prosecution regarding demand of wrist watch and Rs. 1000/- is to be tested, it becomes very difficult to accept the same. According to P.w.3 and her husband p.w.6, a sum of Rs. 300/- was borrowed from one Balu Patil. P.w.6 admitted that said Balu was present in the court premises. However the said Balu has not been examined. The case of the prosecution is that P.w.6 obtained loan of Rs. 1000/- from village society. However, no documentary evidence has been produced by the prosecution as regards the said loan. The representatives of the society has not been examined. None of the prosecution witnesses have not stated the name of the society. P.w.6 admitted that he was unable to tell the month and year when the loan was obtained. If he had obtained a loan of Rs.1000/- from the society, surely evidence could have been produced about the said loan transaction. However that has not been done. As far as demand for money and gold ornaments is concerned, apart from the fact that evidence of prosecution witnesses is inconsistent, P.w. nos.2 and 3 have admitted that before the police they have not stated anything about the said demand. It is pertinent to note that even going by the prosecution case, Alka's mother had stayed for a night in her matrimonial home before Alka was taken to her parent's

house on account of sickness. It is candidly admitted by P.w.3 that during her overnight stay, there was no discussion about any demand. Thus there is hardly any convincing evidence on record as regards any demand made by the appellants. It must be noted here that evidence on record shows that some expenditure was incurred even by appellants on the marriage ceremony. The document at Exh.16 shows that the appellants also agreed to give ornaments and clothes to Alka at the time of marriage. P.w.6 admitted that as per the custom, gifts were given by him to his daughter Alka at the time of marriage. The document Exh.16 is produced by the prosecution. The said document as stated earlier, disclosses that expenses of marriage were to be born by the side of the bride and Alka's father agreed to pay Rs. 8025/- specifically on account of the expenditure on marriage. Thus the prosecution has not at all established any demand for or in connection with dowry made by the appellants.

20. So far as the alleged harassment and cruelty is concerned, both P.ws. 2 and 3 admitted that in their statement before the police they were not stated about the incident of appellant no.1 giving two slaps on the face of the deceased and of dragging the deceased out of the matrimonial house. Both P.ws. 2 and 3 have come out with the said story for the first time in the examination-in-chief. Even according to the version

of the investigating officer, no such statements were made by P.ws. 2 and 3 before the police. It is pertinent to note that about eight days prior to the incident, the deceased and P.ws. 2 and 3 were allegedly driven away from the matrimonial home of Alka. No attempt was made to file any complaint though Alka was staying with her parents. Omission to make any such complaint also becomes relevant. Thus the prosecution has not all proved any harassment or cruelty of the deceased at the hands of the appellants.

21. P.w.1 Balu has stated in his evidence that the water in the said well of Pundikar is very dirty and cannot used for drinking. It is pertinent to note that P.w.8 Maruti, the investigating officer has come out with a case that the water in the well was clean.
He stated that it was a old well.

21. The learned trial Judge in the impugned judgment and order has not at all adverted to the aforesaid aspects of the case. He has not recorded any specific finding regarding the specific demand of dowry by the appellants. The learned trial Judge has not at all considered very important admissions in the evidence of P.w.nos. 2, 3 and 6. I find that the prosecution has not brought home the charge relating to any demand of dowry or any demand of valuable security or

articles by the appellants. Even cruelty or ill-treatment covered by clause (a) of explanation to section 498 A of the Penal Code is not established by the prosecution. As a demand for or in connection of dowry is not established, obviously Section 304-B of the Penal Code will not apply.

23. Thus the only conclusion which can be drawn is that guilt of the appellants was not established by the prosecution beyond reasonable doubt. Thus the appeal must succeed and hence I pass the following order.

i) The impugned judgment and order dated 11th August 1990 passed by the learned 4th Additional Sessions Judge, Kolhapur in Sessions case No.161 of 1989 is quashed and set aside. The appellants are acquitted of the offences alleged against them.

ii)The bail bonds of appellants stand cancelled.

iii) If the fine amount of Rs. 3000/- is deposited by the appellants, and the same is not paid to the father of the deceased till today, the amount of fine shall be refunded to the appellants.

FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE.
CRIMINAL APPEAL NO. 713 OF 1990

Office Notes, Office Memorada orders or directions and Registrar‘s orders.	Court‘s or Judge‘s Orders.
	Shri A.P.Mundargi for the appellant Shri U.V.Nikam APP for respdt.
	CORAM; ABHAY S. OKA J.
	DTAED: 29th January, 2007.
	P.C.
	1. For reasons recorded separately the following order is passed.
	i) The impugned judgment and order dated 11th August 1990 passed by the learned 4th Additional Sessions Judge, Kolhapur in Sessions case No.161 of 1989 is quashed and set aside. The appellants are acquitted of the offences alleged against them.
	ii)The bail bonds of appellants stand cancelled.

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